Supreme Court, U.S.
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No. 96-669

In The

Supreme Court of the United States

October Term, 1996

JOHNNY DUPREE, et al.,

Appellants,

v.

MIKE MOORE, et al.,

Appellees.

On Appeal From The United States District Court For The Southern District Of Mississippi

MOTION TO DISMISS OR AFFIRM

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December 2, 1996

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QUESTION PRESENTED FOR REVIEW

Whether the stay imposed below sustains the equitable policies affirmed in *Lopez v. Monterey County, California*, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 1996 WL 637045 (U.S.), 1996 U.S. LEXIS 6826?

PARTIES TO PROCEEDINGS BELOW

Appellees, The Lamar County, Mississippi, Board of Education and Trustees, adopt the list of Parties to Proceedings Below as set forth in the Motion of Appellees to Dismiss or Affirm presented by Appellees the Forrest County School District and the Members of the Board of Trustees and the Attorney General of the State of Mississippi.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

PARTIES TO PROCEEDINGS BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATUTES INVOLVED 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 2

ARGUMENT 2

I. The Stay Imposed by the Three-Judge Court Below sustains the Equitable Policies Set Forth in *Lopez v. Monterey County, California*, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 1996 WL 637045 (U.S.), 1996 U.S. LEXIS 6826 2

CONCLUSION 5

TABLE OF AUTHORITIES

Page

CASES

Berry v. Doles, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed.2d 693 (1978) 3, 4

Lopez v. Monterey County, California, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 1996 WL 637045 (U.S.), 1996 U.S. LEXIS 6826 ..... 2, 3, 4

Perkins v. Matthews, 400 U.S. 379, 91 S.Ct. 431, 27 L.Ed.2d 476 (1971) 4

INTRODUCTION

The Lamar County, Mississippi, Board of Education and Trustees, joins the Motion to Dismiss or Affirm presented by the Forrest County School District and the Members of the Board of Trustees and the Attorney General of the State of Mississippi.

Lamar and Forrest County School Districts were granted leave to intervene in the early stages of this litigation by the Three-Judge District Court, below.

STATUTES INVOLVED

The statutes and regulations involved are set forth in the Appellants' Jurisdictional Statement and the Forrest County School District and the Members of the Board of Trustees and Attorney General of the State of Mississippi's Motion to Dismiss or Affirm.

STATEMENT OF THE CASE

The Lamar County, Mississippi, Board of Education and Trustees, adopts the summary of fact set forth by the Three-Judge Court, below, and the statement of the facts presented by the Forrest County School District and the Members of the Board of Trustees and the Attorney General of the State of Mississippi.

STATEMENT OF THE FACTS

The Lamar County, Mississippi, Board of Education and Trustees, adopts by reference the Statement of Facts submitted in the Motion to Dismiss or Affirm presented by The Forrest County School District and the Members of the Board of Trustees and the Attorney General of the State of Mississippi.

ARGUMENT

I. The Stay Imposed by the Three-Judge Court Below Sustains the Equitable Polices Set Forth in *Lopez v. Monterey County, California*, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 1996 WL 637045 (U.S.), 1996 U.S. LEXIS 6826.

To vacate the stay entered by the district court would create an injunction under § 5 of the Voting Rights Act which fails to identify what "change" is to be rendered unenforceable. The complaint in this action challenged a lack of § 5 preclearance for a comprehensive state statutory scheme reorganizing Mississippi school districts.[1] The litigation thus far has now indentified two subsections of that school law as subject to preclearance. No express terms of an injunction have been spelled out. No order has indicated what portion of the State's school system is linked to "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting . . . " 42 U.S.C. § 1973c. No one knows

[1] Uniform School Law of 1986, § 37-6-1 *et seq.*, Miss. Code Ann. (Supp. 1986).

what property, if any, must be ceded, where, or whether the court must limit a voting remedy to a particular election, and if so, which one.

The appellants, plaintiffs below, have never asked that any election be enjoined.[2] They have never demonstrated standing to enjoin state-wide elections.[3]

In accord with *Lopez v. Monterey County, California*, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 1996 WL 637045 (U.S.), 1996 U.S. LEXIS 6826, the three-judge district court below has ordered that "the covered jurisdiction submit its election plan to the appropriate federal authorities for preclearance as expeditiously as possible." 1996 U.S. LEXIS at page *26. Also in accord with *Monterey County*, the district court below has not formed an interim plan, and has thereby avoided having "interposed itself into the § 5 approval process in a way that the statute does not contemplate." *Id.* at *27. Instead, it has sought to insure that "The requirements of federal scrutiny should be satisfied without further delay. *See Berry v. Doles*, 438 U.S. at 192, 98 S.Ct. at 2693," *Id.* at *28.

Lopez v. Monterey County identifies a three step process: "The three-judge district court may determine only

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[2] The plaintiffs presented facts specific to their town, without showing that any voting impact results to other school districts. However, a state-wide injunction against the State's school law as a whole causes administrative havoc. A state-wide injunction affects a multitude of other school districts never examined by the court.

[3] Neither have they demonstrated that enjoining elections would cure alleged vote dilution where the plaintiffs' municipality appoints its school board.

whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate," *Id.* at *26. The *Dupree* court below is still engaged in the second step, determining "whether § 5's approval requirements were satisfied." Similarly, the *Monterey County* court had not ordered an interim voting plan as remedy there until the § 5 case before the District of Columbia court was voluntarily dismissed before any judicial determination was made. The *Dupree* court, in equity, has held up imposing a "temporary remedy, if any." This Court, in *Lopez v. Monterey County*, approved such discretion. "We acknowledged in *Clark* [*Clark v. Roemer*, 500 U.S. 646 (1971)] that earlier decisions such as *Perkins v. Matthews*, 400 U.S. 379, 91 S.Ct. 431, 27 L.Ed.2d 476 (1971), and *Berry v. Doles*, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed.2d 693 (1978) (*per curiam*), held that where a covered jurisdiction had already conducted elections under an unprecleared plan, it might be appropriate for the district court to afford local officials an opportunity to seek federal approval before ordering a new election." *Id.* at *21. The court below has followed this procedure.

There is nothing in this record which shows that an election is immediately impending, and in fact, no school board elections in Mississippi are expected before the District Court in D.C. has an opportunity to reach a decision. The stay issued by the *Dupree* three judge district court is therefore proper under the precedent existing under *Perkins v. Matthews, supra*, and *Berry v. Doles, supra*, as now reaffirmed by *Monterey County*.

CONCLUSION

This Court should decline to interrupt the process put in place by the three-judge district court below. The Motion to Dismiss or Affirm should be granted.

Respectfully submitted,

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